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Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert H. Corbin

December 18, 1980

ARIZONA LAW LIBRARY

INTERAGENCY

Ms. Sharon G. Womack  
Acting Director  
Department of Library, Archives  
and Public Records  
1130 North 22nd Avenue  
Phoenix, AZ 85009

Re: I80-214 (R80-222)

Dear Ms. Womack:

This letter is in response to your request for our opinion concerning whether your Department properly may destroy microfilmed paid claims against the State ten years after the end of the fiscal year in which the claims have been fully paid. Your letter indicates that, if we opined that the microfilmed claims may be destroyed after the ten-year period, you nevertheless would retain all microfilmed claims that are involved in any litigation at the end of that period until such time as the litigation is finally resolved.

As your letter indicates, A.R.S. § 41-734, subsection B, requires your Department to microfilm paid claims. The subsection states:

After the expiration of five years, or sooner if such claims have been post-audited, all completed claims with supporting documents in the custody of the office of the assistant director for finance shall be transferred to the section of archives of library, archives and public records. The claims shall be microfilmed, and if the claims have been post-audited the supporting papers attached thereto may be destroyed without microfilming. All claims after microfilming and post-auditing may be destroyed.

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The subsection requires the assistant director for finance to transfer to your Department all completed claims with supporting documentation. The transfer is to be effected as soon as the claims have been post-audited, but no later than five years following an unspecified date which probably is the date upon which the claim has been paid in full. Your Department is directed to microfilm the claims, and, if the claims have been post-audited and microfilmed, your Department is permitted to destroy both the originals of the claims and the supporting documents. The subsection does not indicate for how long the microfilmed claims must be retained.

The retention and disposition of State government records are covered elsewhere in the statutes, however. In subsection A of A.R.S. § 41-1349, your Department is mandated to do the following:

1. With approval of the attorney general and auditor general, determine whether public records presented to it are of legal, administrative, historical or other value.
2. Dispose of records determined to be of no legal, administrative, historical or other value.
3. Accept those records deemed by a public officer having custody thereof to be unnecessary for the transaction of the business of his office and deemed to be of legal, administrative, historical or other value.

This provision directs your Department to dispose of records<sup>1</sup>/ that your Department, the Attorney General and the Auditor General determine have no legal, administrative,

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1. The word "records" is defined in A.R.S. § 41-1350 in an all-inclusive manner. That section states:

In this chapter [which includes A.R.S. § 41-1349], unless the context otherwise requires, "records" means all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, including microphotographic film prints or copies of such items reproduced

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historical or other value. Once your Department, the Attorney General and the Auditor General make the determination that the records have no such value, the last-quoted provision would seem explicitly to give your Department the prerogative and, in fact, the duty to destroy the records. We therefore assume that the only reason you now question whether the microfilmed claims may be destroyed after it has been determined that they have no value is that the previously-quoted subsection B of A.R.S. § 41-734 might be viewed as imposing a duty upon your Department to retain those claims forever because of its lack of any language permitting you to destroy them.

A superficial reading of subsection B of A.R.S. § 41-734, without reference to any other statute, could lead to this view. The contention could be made that, because the subsection explicitly authorizes your Department to destroy the originals of the claims and the supporting documents under the specified circumstances, the omission of any such authorization to destroy the microfilmed claims requires your Department to retain them. Implicit in this contention, of course, is that the claims must be retained forever, since the subsection obviously does not specify the retention period.

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Footnote No. 1 Continued


pursuant to § 41-1348, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government, or because of the informational and historical value of data contained therein. Library or museum material made or acquired solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications or documents intended for sale or distribution to interested persons, are not included within the definition of "records" as used in this chapter.

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We reject this reading of subsection B, however. There would not appear to be any reason why the Legislature would mandate your Department to keep the microfilmed claims forever, particularly given the expenses associated with record retention. Whatever interest the State or the public may have that government records be retained is adequately protected by the previously-quoted subsection A of A.R.S. § 41-1349, which directs that records may be destroyed only after your Department, the Attorney General and the Auditor General all have determined that the records have no legal, administrative, historical or other value.

Consequently, construing subsection B of A.R.S. § 41-734 in a reasonable fashion, as we are required to do, Smith v. Pima County Law Enforcement Council, 113 Ariz. 154, 157, 548 P.2d 1151 (1976), and giving effect to both it and subsection A of A.R.S. § 41-1349, as we also are required to do, Ordway v. Pickrell, 112 Ariz. 456, 459, 543 P.2d 444 (1975), we conclude that your Department may destroy the microfilmed claims after ten years or even sooner provided your Department complies with the procedure described in subsection A of A.R.S. § 41-1349.

Sincerely,



BOB CORBIN  
Attorney General

BC:ASK:ps